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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2016-0009]

RIN 0579-AE32

Importation of Fresh Cape Gooseberry Fruit From Ecuador to the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation of fresh cape gooseberry fruit from Ecuador into the continental United States. As a condition of entry, fresh cape gooseberry fruit from Ecuador would be subject to a systems approach that would include requirements for establishment of pest-free places of production and the labeling of boxes prior to shipping. Fresh cape gooseberry fruit from non pest-free places of production would have to undergo approved cold treatment or irradiation. The fresh cape gooseberry fruit would also have to be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the national plant protection organization of Ecuador certifying that the fruit has been produced in accordance with the systems approach. Fresh cape gooseberry fruit that does not meet the conditions of the systems approach would be allowed to be imported into the continental United States subject to treatment. This action would allow for the importation of fresh cape gooseberry fruit from Ecuador into the continental United States while continuing to provide protection against the introduction of plant pests.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to
<http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0009>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2016-0009, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0009> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 851-2352.

SUPPLEMENTARY INFORMATION:

Background

The regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56-1 through 319.56-82, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction or dissemination of plant pests within the United States.

The Animal and Plant Health Inspection Service (APHIS) received a request from the national plant protection organization (NPPO) of Ecuador to amend the regulations to allow the importation of commercially produced fresh cape gooseberry fruit (*Physalis peruviana*) from Ecuador into the continental United States. In evaluating Ecuador's request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). Copies of the PRA and the RMD may be obtained from the person listed under FOR FURTHER INFORMATION CONTACT or viewed on the Regulations.gov website (see ADDRESSES above for instructions for accessing Regulations.gov).

The PRA, titled "Importation of Fresh Cape Gooseberry Fruit (*Physalis peruviana* L.) into the Continental United States from Ecuador" (October 2011), analyzes the potential pest risk associated with the importation of fresh cape gooseberries into the continental United States from Ecuador.

The PRA identifies *Ceratitis capitata* (Medfly) as the one quarantine pest that could be introduced into the United States in consignments of fresh cape gooseberry fruit from Ecuador. A quarantine pest is defined in § 319.56-2 as "a pest of potential economic importance to the area endangered by it and not yet present there, or present but not widely distributed there and being officially controlled." In the PRA, the likelihood and consequences of introducing this pest to the United States are considered, and Medfly is rated as having a high pest risk potential. Pests receiving a rating within this range may necessitate specific phytosanitary measures in addition to standard port-of-entry inspection of the commodity being imported into the continental United States.

Based on the findings of the PRA, APHIS has determined that measures beyond standard port-of-entry inspection would mitigate the risks posed by this pest. These measures are listed in

the RMD and are used as the basis for the requirements included in this proposed rule. We are therefore proposing to allow the importation of fresh cape gooseberry fruit from Ecuador into the continental United States if it is produced under a systems approach or subject to cold treatment or irradiation in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual¹ and 7 CFR part 305. If shipments are treated with irradiation in Ecuador, they would have to be accompanied by documentation to validate foreign site preclearance inspection of shipments of fresh cape gooseberry fruit after the required treatment is completed.

All fruit, regardless of whether it was produced under the systems approach or subject to treatment would have to be imported in commercial consignments only and subject to the requirements regarding registered production areas and phytosanitary certification detailed below.

These requirements would be added to the regulations as a new § 319.56-83.

Operational Workplan

We would require the NPPO of Ecuador to provide an operational workplan to APHIS that details the activities the NPPO will carry out to meet the requirements of this regulation, subject to APHIS' approval of the workplan. APHIS would be directly involved with the NPPO in monitoring and auditing implementation of the systems approach. An operational workplan is an agreement between APHIS officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities that specifies in detail the phytosanitary measures that will be carried out to comply with our regulations regarding a specific commodity. Operational workplans apply only to the signatory parties and establish detailed procedures and guidance for the day-to-day operations of specific import/export programs. Operational workplans also

¹ The PPQ Treatment Manual may be found on the Internet at https://www.aphis.usda.gov/import_export/plants/manuals/ports/downloads/treatment.pdf.

establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. The implementation of a systems approach typically requires an operational workplan to be developed.

Commercial Consignments

Only commercial consignments of fresh cape gooseberry fruit from Ecuador would be allowed to be imported into the continental United States. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial consignments, as defined in § 319.56-2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

Production Site Registration

Under this proposed rule, the production site where the fruit is grown would be required to be registered with the NPPO of Ecuador. Official identification of the production site would have to be marked on all field cartons and containers of harvested fresh cape gooseberry fruit.

Registration of production sites with the NPPO of Ecuador and marking of field cartons and containers with identification that would need to be maintained until the fruit is released for entry into the continental United States would allow traceback to the production site if pest problems were found on fruit shipped to the United States. Problem production sites could then be suspended until further mitigation measures were taken to address the pest populations.

Packinghouse Requirements

All openings to the outside of the packinghouse must be covered by screening or by some other barrier that prevents pests from entering. The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the fresh cape gooseberry fruit is packed.

Phytosanitary Certificate

Each consignment of fruit would have to be accompanied by a phytosanitary certificate issued by the NPPO of Ecuador that contains an additional declaration stating that the fruit in the consignment was produced in accordance with the requirements of § 319.56-83.

Requiring a phytosanitary certificate would ensure that the NPPO of Ecuador has certified that the fruit meets the conditions in the section for export to the United States.

Mitigation Measures for Medfly

As stated previously the risks presented by Medfly would be addressed either via compliance with an established systems approach or treatment in accordance with the PPQ Treatment Manual and 7 CFR part 305.

Systems Approach

All places of production would have to be located within an area of low prevalence for Medfly. APHIS has reviewed and approved the methods used by the NPPO of Ecuador to survey for low pest prevalence and to recognize specific places of production as free of Medfly in the specified areas. Pest-free places of production within certified low pest prevalence areas have been effectively used in the past as an element of a systems approach to allow fruits to be safely imported into the United States, and we believe this measure can be successfully applied to the importation of fresh cape gooseberry fruit from Ecuador.

We would require the use of trapping to monitor the places of production within low prevalence areas as part of the systems approach to mitigate the risk posed by Medfly. The NPPO of Ecuador would be required to certify that places of production have effective fruit fly trapping programs and follow pest control guidelines. The NPPO of Ecuador or its approved designee² would be required to place fruit fly traps at intervals specified in the operational workplan to demonstrate place of production freedom from Medfly. Medfly capture would result in immediate cancellation of exports from farms within a 5 kilometer radius of the detection site. An additional 50 traps would have to be placed in the 5 square kilometers area surrounding the detection site. If a second detection is made within the detection area within 30 days of the first, eradication using a bait spray agreed upon by APHIS and the NPPO of Ecuador would have to be initiated in the detection area and treatment would have to continue for at least 2 months. Exports could resume from the detection area when APHIS and the NPPO of Ecuador agree the risk has been mitigated. These requirements would ensure that production sites are monitored, that no fruit is shipped from sites where Medfly has been detected, and that the presence of Medfly is addressed quickly and definitively. Affected sites would still be eligible to export fruit to the United States subject to treatment as described below.

After the commodity is packed, the NPPO of Ecuador must visually inspect the fresh cape gooseberry fruit at a rate jointly approved by APHIS and the NPPO of Ecuador. Any fruit displaying evidence of pest presence must be cut open for further examination. External and internal inspection of a sample would ensure that pests at various life stages are detected. Any

² An approved designee is an entity with which the NPPO creates a formal agreement that allows that entity to certify that the appropriate procedures have been followed. The approved designee can be a contracted entity, a coalition of growers, or the growers themselves.

consignment that does not pass inspection may still be imported into the continental United States subject to treatment as described below.

Treatments

Fresh cape gooseberry fruit that comes from a place of production that does not qualify as a pest free place of production in an area of low pest prevalence may still be exported to the continental United States subject to cold treatment or irradiation treatment in accordance with the PPQ Treatment Manual and 7 CFR part 305.

Executive Orders 12866 and 13771 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. Further, because this rule is not significant, it is not subject to the requirements of Executive Order 13771. However, the Department considers this a deregulatory action for purposes of Executive Order 13771.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and equity). The economic analysis also examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov website (see ADDRESSES above for instructions for accessing Regulations.gov).

APHIS is proposing to amend the current regulations to allow the entry of fresh cape gooseberry fruit from Ecuador into the continental United States under approved treatment protocols or a systems approach. The proposal would benefit U.S. fresh fruit importers and merchants by providing for an additional source for fresh cape gooseberry fruit. U.S. import levels for fresh cape gooseberry fruit are not known because fresh cape gooseberry fruit is aggregated in U.S. census trade statistics with black, white, and red currants under the Harmonized Trade Schedule 081030. In 2015, the United States imported approximately 78.7 metric tons of gooseberries and currants valued at about \$476,000. Data are not readily available pertaining to Ecuador's production and export of fresh cape gooseberry fruit, nor is the quantity of fresh cape gooseberry fruit expected to be imported into the United States from Ecuador known.

The United States does not produce fresh cape gooseberry fruit commercially. Small entities that would benefit from fresh cape gooseberry fruit imports from Ecuador would be importers, wholesalers, and other merchants who sell this fruit. While these industries are primarily comprised of small entities, APHIS expects any impacts of the rule for these businesses to be minor.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow fresh cape gooseberry fruit to be imported into the continental United States from Ecuador. If this proposed rule is adopted, State and local laws and regulations regarding fresh cape gooseberry fruit imported under this rule would be

preempted while the fruit is in foreign commerce. Fresh fruit is generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), reporting and recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send comments on the Information Collection Request (ICR) to OMB's Office of Information and Regulatory Affairs via email to oir-submissions@omb.eop.gov, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2016-0009. Please send a copy of your comments to the USDA using one of the methods described under ADDRESSES at the beginning of this document.

APHIS is proposing to allow the importation of fresh cape gooseberry fruit from Ecuador into the continental United States under certain conditions designed to prevent the introduction of *Ceratitidis capitata*. Implementing this rule will require information collection activities such as an operational workplan prepared by the NPPO of Ecuador, production site registration, the marking of fruit cartons with identification of their production sites, phytosanitary inspections and certificates, preparing a certified low prevalence area production site list, notices of suspension to export and notices of resumption to export, preclearance inspection

documentation, import permit applications, port notices of arrival, port emergency action notifications, and creation and maintenance of pest monitoring, trapping, and production records.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.036 hours per response.

Respondents: NPPO of Ecuador, production site and packing site managers, and importers of cape gooseberry from Ecuador.

Estimated annual number of respondents: 147.

Estimated annual number of responses per respondent: 1,441.

Estimated annual number of responses: 211,882.

Estimated total annual burden on respondents: 7,566 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

A copy of the information collection may be viewed on the Regulations.gov website or in our reading room. (A link to Regulations.gov and information on the location and hours of the reading room are provided under the heading ADDRESSES at the beginning of this proposed rule.) Copies can also be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2483. APHIS will respond to any ICR-related comments in the final rule. All comments will also become a matter of public record.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2483.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319–FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Add § 319.56-83 to read as follows:

§ 319.56-83 Fresh cape gooseberry from Ecuador.

Fresh cape gooseberry (*Physalis peruviana*) fruit may be imported into the continental United States only under the conditions described in this section. These conditions are designed to prevent the introduction of *Ceratitis capitata*.

(a) *General requirements.* (1) The national plant protection organization (NPPO) of Ecuador must provide an operational workplan to APHIS that details the activities that the NPPO of Ecuador will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. APHIS will be directly involved with the NPPO of Ecuador in monitoring and auditing implementation of the systems approach.

(2) The production site where the fruit is grown must be registered with the NPPO of Ecuador.

(3) Harvested fresh cape gooseberry fruit must be placed in field cartons or containers that are marked to show the official identification of the production site.

(4) All openings to the outside of the packinghouse where the fruit is packed must be covered by screening or by some other barrier that prevents pests from entering. The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the fresh cape gooseberry fruit is packed.

(5) Each consignment of fresh cape gooseberry fruit must be accompanied by a phytosanitary certificate issued by the NPPO of Ecuador that contains an additional declaration stating that the fruit in the consignment was produced in accordance with § 319.56-83.

(b) *Commercial consignments.* The fresh cape gooseberry fruit may be imported in commercial consignments only.

(c) To be eligible for importation, the fresh cape gooseberry fruit must either be produced and shipped under the systems approach described in paragraph (d) of this section or treated in accordance with paragraph (e) of this section.

(d) *Systems approach.* The fresh cape gooseberry fruit may be imported without treatment if it is subject to a systems approach consisting of the following:

(1) *Low-prevalence production site certification.* The fruit must originate from a registered production site within a low prevalence area for *C. capitata* that has been certified as such by the NPPO of Ecuador.

(2) *Fruit fly trapping.* (i) Trapping for *C. capitata* must be conducted in the places of production in accordance with the operational workplan to demonstrate that those places are free of *C. capitata*. Specific trapping requirements must be included in the operational workplan. The NPPO of Ecuador must keep records of fruit fly detections for each trap and make the records available to APHIS upon request.

(ii) All fruit flies trapped must be reported to APHIS immediately. Capture of *C. capitata* will result in immediate cancellation of exports from farms within 5 kilometer radius of the detection site. An additional 50 traps must be placed in the 5 square kilometer area surrounding the detection site. If a second detection is made within the detection areas within 30 days of a previous capture, eradication using a bait spray agreed upon by APHIS and the NPPO

of Ecuador must be initiated in the detection area. Treatment must continue for at least 2 months. Sites whose exports have been canceled under this paragraph will be eligible to export fruit to the United States only if the fruit is treated in accordance with paragraph (e) of this section. Exports may resume from the detection area in accordance with this paragraph (d) when APHIS and the NPPO of Ecuador agree the risk has been mitigated.

(3) *Phytosanitary inspection.* After packing, the NPPO of Ecuador must visually inspect the fresh cape gooseberry fruit at a rate jointly approved by APHIS and the NPPO of Ecuador. Any fruit displaying evidence of pest presence must be cut open for further examination. Only in the case where at least one single live *C. capitata* is found, the consignment will not pass inspection. Any consignment that does not pass inspection may still be imported into the continental United States subject to treatment as provided in paragraph (e) of this section.

(e) *Treatment.* The fresh cape gooseberry fruit may be imported into the continental United States without meeting the conditions of paragraph (d) of this section if the fruit is subject to cold treatment or irradiation treatment in accordance with part 305 of this chapter. If the irradiation treatment is completed in Ecuador, each consignment of fresh cape gooseberry fruit must be accompanied by documentation to validate foreign site preclearance inspection of the consignment.

Done in Washington, DC, this 16th day of April 2018.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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